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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/725,251  | 12/01/2003  | Robert Jason Vickers | P146                | 1935             |
| 27752                      7590                      10/13/2010<br>THE PROCTER & GAMBLE COMPANY<br>Global Legal Department - IP<br>Sycamore Building - 4th Floor<br>299 East Sixth Street<br>CINCINNATI, OH 45202 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| LAU, JONATHAN S   |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 1623  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/725,251

**Applicant(s)**

VICKERS ET AL.

**Examiner**

Jonathan S. Lau

**Art Unit**

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 6-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 17 Sep 2010 has been entered.

This Office Action is responsive to Applicant's Amendment and Remarks, filed 17 Sep 2010, in which claim 1 is amended to change the scope and breadth of the claim.

This application is a domestic application, filed 01 Dec 2003.

Claims 1-3 and 6-20 are pending in the current application. Claims 9-20, drawn to non-elected inventions, are withdrawn. Claims 1-3 and 6-8 are examined on the merits herein.

### ***Rejections Withdrawn***

Applicant's Amendment, filed 17 Sep 2010, with respect to claims 1-3 and 6-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite has been fully

considered and is persuasive, as amended claim 1 clearly recites concentration of crude protein and not a concentration of a protein source.

This rejection has been **withdrawn**.

Applicant's Amendment, filed 17 Sep 2010, with respect to claims 1 and 6-8 rejected under 35 U.S.C. 102(a) as being anticipated by Flickinger et al. (J. Anim. Sci., August 2003, 81(8), p2008-2018, provided by Applicant in IDS mailed 15 Aug 2007) has been fully considered and is persuasive, as amended claim 1 requires added short chain oligofructose and recites the composition comprising a fiber source selected from a group that does not include wheat.

This rejection has been **withdrawn**.

Applicant's Amendment, filed 17 Sep 2010, with respect to claims 1-3 and 6-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger et al. (J. Anim. Sci., August 2003, 81(8), p2008-2018, provided by Applicant in IDS mailed 15 Aug 2007) has been fully considered and is persuasive, as amended claim 1 requires added short chain oligofructose and recites the composition comprising a fiber source selected from a group that does not include wheat.

This rejection has been **withdrawn**.

The following are new grounds of rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Amended Claims 1, 3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillon et al. (US Patent Application Publication 2003/0195166, published 16 Oct 2003, filed 9 Mar 2001, cited in PTO-892, corresponding to WIPO Publication WO 01/65949, provided by Applicant in IDS mailed 18 May 2005).

Baillon et al. teaches the use of a non-digestible carbohydrate in a composition for a pet animal (page 1, paragraph 12), implying the non-digestible carbohydrate is added, where the non-digestible carbohydrate includes fructooligosaccharides as well as a dietary fiber component such as sugar beet pulp, rice bran, carob bean or gum talha (page 1, paragraph 14) and fructooligosaccharides come in varieties of 1-kestose, nystose and B-fructofuranosylnystose and teaches multiple oligosaccharides may be

used (paragraph 15 spanning page 1 and 2). Baillon et al. teaches the composition in the form of a pet food such as a dry or wet product or a semi-moist product (page 2, paragraph 26), interpreted as a mixture of dry and wet product. Baillon et al. teaches the pet food product as a complete and balanced food (page 2, paragraph 27), or a nutritionally balanced pet food. Baillon et al. teaches the pet food may incorporate meat or animal derived material such as beef, chicken, turkey, lamb, pork or fish or a meat substitute such as soya or maize gluten to provide a protein source and teaches a typical dry dog or cat food contains 20-30% crude protein (page 3, paragraph 28). Baillon et al. teaches the pet food is preferably a cat or dog food (page 3, paragraph 29). Baillon et al. teaches the pet food comprises 0.1 to 5 weight % of an oligosaccharide and preferably 0.1 to 2 weight % (page 3, paragraph 30). Baillon et al. teaches the level of non-digestible fiber such as a dietary fiber component is approximately 0.15 to 8% (page 3, paragraph 31), implying the addition of both said oligosaccharide and said dietary fiber component to the pet food as separate components.

Baillon et al. does not specifically teach a composition comprising from about 0.01% to 0.19% of added short chain oligofructose (instant claim 1). Baillon et al. does not specifically teach a composition comprising from about 0.05% to 0.19% of the short chain oligofructose (instant claim 3). Baillon et al. does not specifically teach a composition comprising from about 0.05% to 0.18% of the short chain oligofructose (instant claim 7).

It would have been obvious to one of ordinary skill in the art to combine the teaching of Baillon et al. MPEP 2144.05 I. provides, "In the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists." Baillon et al. teaches the pet food comprises 0.1 to 5 weight % of said oligosaccharide and preferably 0.1 to 2 weight %, overlapping with the instantly claimed ranges and providing guidance for preferably reducing the concentration of said oligosaccharide.

Amended Claims 1-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillon et al. (US Patent Application Publication 2003/0195166, published 16 Oct 2003, filed 9 Mar 2001, cited in PTO-892, corresponding to WIPO Publication WO 01/65949, provided by Applicant in IDS mailed 18 May 2005) in view of Flickinger et al. (J. Anim. Sci., August 2003, 81(8), p2008-2018, provided by Applicant in IDS mailed 15 Aug 2007).

Baillon et al. teaches as above. Baillon et al. teaches fructooligosaccharides (FOS) and GOS are synthetically made and sold (page 2, paragraph 15).

Baillon et al. does not specifically teach a composition wherein the short chain oligofructose comprises from about 30% to about 40% 1-kestose, from about 50% to about 60% nystose, and from about 5% to about 15% 1F-beta-fructofuranosylnystose, by weight of the short chain oligofructose (instant claim 2).

Flickinger et al. is drawn to dog food compositions. Flickinger et al. teaches scFOS in the form of NutraFlora added to a dog food composition (page 2010, right

column, paragraph 4). The commercial product Nutraflora is defined in the instant specification as having 34% 1-kestose, 55% nystose and 10% 1F-beta-fructofuranosylnystose (Instant Specification, Page 4, second paragraph).

It would have been obvious to one of ordinary skill at the time of the invention to combine Baillon et al. in view of Flickinger et al. Both Baillon et al. and Flickinger et al. are drawn to the use of a non-digestible carbohydrate such as fructooligosaccharides to affect intestinal bacteria in a pet such as a dog. One of ordinary skill in the art would have been motivated to combine Baillon et al. in view of Flickinger et al. with a reasonable expectation of success because Baillon et al. teaches the fructooligosaccharides added to the pet food of Baillon et al. may be a commercial product and Flickinger et al. teaches the commercial fructooligosaccharide product NutraFlora added to a dog food.

### ***Conclusion***

No claim is found to be allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan S. Lau whose telephone number is 571-270-3531. The examiner can normally be reached on Monday - Thursday, 9 am - 4 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on 571-272-0627. The fax phone



number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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